IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1139 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGARDAS R SHAH

Versus

TRUSTEES OF BAI SAMARTH JAIN SWETAMBER MURTIPUJAK TRUST

Appearance:

1. Civil Revision Application No. 1139 of 1986

MR SURESH M SHAH for Petitioners

MR SURESH C SHAH for Respondents Nos. 1A to 1/D

Respondent No. 2 :: Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/10/2002

ORAL JUDGEMENT

This Revision Application arises from the

judgment and order dated 20th August, 1986 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No. 306 of 1980. The petitioners before this Court are the Appellants-Defendants.

The premises in question is a room on the first floor of a building bearing municipal census no. 1602/1, situated at Kalupur, Ahmedabad. The suit premises belongs to a Public Charitable Trust of which the plaintiffs were the Trustees and Managers. The suit premises was leased to one Valchand Raichand Shah, the defendant no.1 sometime in the year 1942. The lease was for the purposes of carrying on business of the lessee. The Rent Note [Exh. 68] was executed by the defendant no. 1 on 14th June, 1942 and the Rent Note [Exh. 52] was executed by the defendant no. 1 on 29th September, 1957. The monthly rent of the suit premises was Rs. 25/=. The plaintiffs instituted H.R.P Suit No. 3904 of 1975 in the Court of Small Causes, Ahmedabad for decree for recovery of possession of the suit premises and the amount of arrears of rent. According to the plaintiffs, the defendant no. 1 was in arrears of rent since 1st November, 1967 and that the tenant had sub-let or assigned the suit premises to the defendants nos. 2 & 3. The plaintiffs had, therefore, become entitled to recover possession of the suit premises.

The suit was contested by the defendants by filing written statement [Exh. 13]. According to the defendants, the suit premises was taken on rent for the business of the partnership; that the defendant no. 1 had renounced the world. He had thus met civil death. Hence, the defendant no. 1 could not be sued. The defendants nos. 2 & 3 had paid the rent time and again, however, the plaintiffs had refused to receive the same. The defendants, therefore, cannot be said to be the tenants in arrears. The defendants nos. 2 & 3 being the partners in the business alongwith the defendant no. 1, they cannot be said to be the sub-tenants or the assignees of the defendant no. 1.

The learned trial Judge under the judgment and order dated 31st March, 1980 held that the suit against the defendant No. 1 was maintainable; that the defendant no. 1 was the tenant in his individual capacity; that there was no valid tender of rent by the defendant no. 1 since 1st November, 1967; that the defendant no. 1 had sublet or assigned the suit premises to the defendants nos. 2 & 3. The learned Judge, therefore, proceeded to allow the suit and pass decree for possession of the suit premises, the amount of arrears of rent and the damages.

The learned Judge also fixed the standard rent of the suit premises at Rs. 25/= per month.

Feeling aggrieved the defendants nos. 2 & 3 preferred Civil Appeal No. 306 of 1980 before the Appellate Bench, Small Causes Court, Ahmedabad. The said appeal was dismissed by the Appellate Bench under the impugned judgment and order dated 20th August, 1986. Feeling aggrieved, the appellants-defendants nos. 2 & 3 have preferred the present Revision Application under section 29(2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

The learned advocate Mr. S.M Shah has submitted that the defendant no. 1 who has received 'Diksha' and has renounced the world can be said to have met civil death. Such person cannot be sued in the Court of Law. The suit against the defendant no. 1 is, therefore, not maintainable. He has also submitted that if the defendant no. 1 is believed to have met civil death, his heirs and legal representatives ought to have been joined a party defendants. In absence of such heirs and legal representatives, the suit is liable to be dismissed for non-joinder of the necessary parties. He has also submitted that the suit is barred by period of limitation also. He has submitted that if it is believed that the defendant no. 1 assigned the suit premises to the defendants nos. 2 & 3 in the year 1967, as found by the courts below, the cause of action for possession of the suit premises arose in the year 1967, the suit filed after the expiry of period of three years is barred by the Law of Limitation, particularly Art. 113 of Schedule to the Indian Evidence Act, 1872. Mr. Shah has also submitted that it is established by evidence that the defendants nos. 2 & 3 did tender rent, however, the same was not received by the plaintiffs. The defendants, therefore, cannot be said to be the tenants in arrears of rent. He has also submitted that the suit premises was taken on rent for the purposes of business of the family, the defendant no. 2 being the member of the family of the defendant no. 1 i.e., the brothers. They were doing business in the suit premises alongwith the defendant no. 1. The defendants nos. 2 & 3, therefore, cannot be said to be the sub-tenants or the assignees, as held by the Courts below. He has also submitted that no order of eviction can be sought against the tenant on the grounds of tenant being in arrears of rent without giving him a notice of demand as envisaged under sub-section (2) of section 12 of the Rent Act. In the present case, there is no proof of valid service of such notice upon the

defendant no. 1. The suit is, therefore, bad and illegal and requires to be dismissed.

The Revision Application is contested by the learned advocate Mr. S.C Shah. Mr. Shah has submitted that the notice of demand as envisaged under sub-section (2) of Section 12 of the Rent Act is required to be served in the manner stipulated under section 106 of the Transfer of Property Act, 1872. The plaintiffs have taken care to see to it that the notice is served in accordance with the said section 106. Both the courts below have also believed valid service of notice of demand under sub-section (2) of Section 12 of the Rent Act. He has relied upon the judgment of the Madras High Court in the matter of T.S Raghupathi Iyer (died) his legal reprsentatives T.R Sitharamiah & Ors. v. Elappan [AIR 1964 Madras 16] and has submitted that the suit against the defendant no. 1, though he has renounced the world, is maintainable. Mr. Shah has read-over the oral evidence and has submitted that it is established that the defendant no. 1 was the only tenant of the suit premises; that the defendant no. 1 had taken the defendants nos. 2 & 3 as partners in his business. Since then, the defendant no. 1 had walked out of the partnership leaving the interest in the suit premises to the defendants nos. 2 & 3 or their partnership firm. In either way, the defendant no. 1 can be said to have sub-let or assigned the suit premises to the defendants nos. 2 & 3 rendering him liable to be evicted from the suit premises. He has relied upon the judgment in the matter of Bhaichand Ratanshi v. Laxmishanker Tribhovan [22 GLR 1063] and has submitted that this Court exercising revisional jurisdiction under section 29 (2) of the Rent Act shall not interfere with the concurrent finding of fact recorded by the Courts below. As to the subletting, Mr. Shah has relied upon the judgment of this Court in the matters of Manchharam Sobhraj & Ors. v. Jamnadas Mulchand & Anr. [16 GLR 898]; of Harshachandra Narsibhai Patel & Ors. v. Ibrahim Haji Khubanbhai [1984 GLH 965] and of Dudabhai @ Dudubhai Karsandas Patel & Ors. vs. Sulochanaben Gopaldas Kothari [1994 (1) GLR 541]. Mr. Shah has also relied upon the judgment of the Hon'ble Supreme Court in the matter of Murli Dhar v. Chuni Lal & Ors. [(1970) All India Rent Control Journal 922].

In the matter of Murli Dhar [Supra], the eviction was sought on the ground that the tenant had sub-let the premises without the consent of the landlord. The Hon'ble Court found that the premises in dispute being a shop, was let-out to a firm having three partners. The

business of the said firm was closed and the shop was used by a new firm. One of the partners in the old firm was also a partner in the new firm. Thereupon, the Hon'ble Court held that, "occupation by a firm is only occupation by its partners. Here the firms have a common partner. Hence, the occupation has been by one of the original tenants." The contention that there was subletting to the new partnership was rejected.

In the matter of Manchharam Sobhraj & Ors. {Supra}, this Court has held that, "the tenant is entitled to take a partner in business if the right of occupation remains with the tenant and does not form part of the assets of the partnership firm."

In the matter of Harshachandra Nasribhai Patel & Ors. [Supra], this Court has held that, "..Section 13 (1) (e) of the Act is much wider and it is not confined merely to the acts of unlawful sub-letting. It also provides that if a tenant has assigned or transferred in any other manner his interest in the premises taken on lease by him, then also the landlord will become entitled to a decree for possession of the said premises. The words "transfer in any other manner" are much wider and would include within their meaning and ambit a transfer made in favour of a relative or a known person, once it is proved that he has left the premises and the transferee is put in exclusive possession."

In the matter of Dudabhai @ Dudubhai Karsandas Patel & Ors. [Supra], similar was the case where this Court held that, "..The sub-letting in this case occurred in 1975, when, upon dissolution of the firm, petitioner No. 1 walked out not only of the business , but also of the premises, and left the business, the premises and the tenancy rights therein to petitioners Nos. 2 and 4." As to the question of valid consideration, the Court held that, "..Once it is proved that in relation to a business premises the tenant has walked out of the premises leaving the premises to another person, (may be, that another person may be his brother) and that another person is in exclusive possession of the business premises, it would not be out of place to raise an inference that parting of possession by the tenant in favour of that another person must be for a valid consideration and the burden would be upon the tenant or the sub-tenant, as the case may be, to prove that parting of possession - both legal and physical - by the tenant in favour of that other person was without any valid consideration."

In the present case, the evidence of the defendant no. 3 is quite clear that the partnership with the defendant no. 1 was dissolved before the defendant no. 1 renounced the world. It is proved on evidence that the defendant no. 1 had ceased to do business in the suit premises since the year 1967 and he received Diksha and renounced the world in the year 1969 and since the year 1969, the defendants nos. 2 & 3 are in exclusive possession of the suit premises and have been carrying on their business in the name of "Navnitlal Bhaichand". The Court below has discussed the evidence in details and has, in my view, correctly held that the defendant no. 1 was the sole tenant of the suit premises and that the defendant no. 1 had put the suit premises in possession of the defendants nos. 2 & 3 to the exclusion of himself. Thus, the unlawful subletting or transfer or assignment of the suit premises is established. Besides, in exercise of revisional jurisdiction, there is no scope for interference with the concurrent finding of unlawful subletting or transfer or assignment of the suit premises.

It is equally true that the valid tender of rent can be made by the tenant alone or by a person making tender in his behalf. Tender of rent by any other person cannot be said to be a valid tender. In the present case, admittedly, the defendant no. 1 ceased to tender rent since 1st November, 1967. The tender of rent made by either of the defendants nos. 2 and 3 cannot be said to be a valid tender of rent. In my view, therefore, the Court below was justified in passing decree for possession under section 12 of the Rent Act.

As to the limitation, be it noted that no defence of limitation was raised by either of the defendants at any stage of the suit. The question being a mixed question of law and fact, cannot be raised now in the present Revision Application. The contention that the defendant no. 1 had received Diksha and renounced the world and has met civil death requires to be rejected outright. The words 'death of the tenant' necessarily mean the physical death of the tenant. The said words are not intended to apply to the cases of 'civil death' i.e. in case of a tenant who adopts a religious order and renounces the world. In the case of T.S Raghupathi Iyer [Supra], it was argued that the Hindu widow on surrender of limited estate suffers physical death. The High Court of Madras rejected the contention and held that, "..The rule only speaks of death and it appears to me, death in a physical sense, not as an abstraction or in a fictional sense."

No other contention is raised before me. The Revision Application is dismissed with costs. Rule is discharged. Interim stay stands vacated.

[Miss R.M Doshit, J.]

Prakash*